

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 362 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHARDABEN G RAVAL

Versus

RAVAL LAXMANBHAI RAYCHANDBHAI

Appearance:

MR ASHOK L SHAH for Appellant
MR KF DALAL for Respondent No. 2
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/09/98

ORAL JUDGEMENT

1. This appeal by the claimant-appellant is directed against the award dated 16-4-1983 of Motor Accident Claims Tribunal, Mahesana in M.A.C.P. No.287/80 under which the claim application filed by the appellant has been dismissed.

2. The facts of the case, in brief, are that the

claimant-appellant is a lady of 30 years old. Her monthly income from agricultural labour and sale of milk is Rs.200/-. On 19-9-1979 along with a party of 20 to 25 ladies and gents of her village she had gone to village Bhalusana in a tractor of the ownership of Patel Amichandbhai Chulabhai. This tractor was driven by Thakarda Kocharasinh Sonasinh. She had gone to that village for consolation visit. At about 5 p.m. when she along with her other members of the party were returning to their own village, the tractor No.GJR 5979 of the ownership of Chodhari Ramabhai Chelabhai was driven by Raval Laxmanbhai Raychandbhai in full speed and while it was passing the road on the side of the tractor in which the claimant was travelling, the trolley of said tractor collided with the right hand side of the trolley of the tractor of the appellant. As a result of this, the claimant sustained injuries on her right hand and other parts of the body. There was a compound fracture on his right hand. The other tractor did not stopped immediately but it stopped after about two miles.

3. This claim application has been contested by the opponents except opponent No.3. The Tribunal has framed as many as three issues and out of which issue No.1 reads as under:

Whether the applicant sustained injuries on account of accident caused by opponent No.1 Raval Laxmanbhai Raichand by driving tractor No. GJF 5979 or/and by opponent No.3 Thakarda Kacharsing Sonsing by driving tractor No.GRA 9683 rashly and negligently on 19-9-79 ?

The learned Tribunal decided Issue No.1 against the claimant-appellant.

4. Under Issue No.2, the Tribunal has found that the applicant would have been entitled for the compensation of Rs.42,700/- but as Issue No.1 was decided against the claimant, her claim application has been dismissed. Hence, this appeal before this Court.

5. Only contention made by the learned counsel for the appellant is that the Tribunal has felt in clear error in deciding the Issue No.1 against the claimant-appellant.

6. I have considered this submission made by the learned counsel for the appellant and gone through the impugned award.

7. Before the Tribunal there was an admitted position that none of the tractor involved in the accident had any damage. It is also not in dispute before the Tribunal that the Police Patel of Vav was contacted but no complaint has been lodged. There appears to be some talks of settlement but the driver of the offending tractor was not traced and it has not come on the record by whom his name has been given as driver of the offending tractor. The statement of one Ramanlal has been recorded but the Tribunal has not committed any error in not placing any reliance on that statement. It was only a case of mere words of that person and in the absence of any reliable evidence, the Tribunal has rightly not believed the case of the claimant. Further scrutiny of statement of Ramanlal has been made by the Tribunal and reasons given not to rely on the statement of this witness cannot be said to be perverse. From his statement I find that it appears to be a concocted witness for the purpose of involvement of offending vehicle in this case.

8. Taking into consideration the totality of the facts of this case, the finding recorded by the Tribunal on Issue No.1 does not call for any interference of this court.

9. In the result, this appeal fails and the same is dismissed.

zgs/-